



General Assembly

February Session, 2010

Amendment

LCO No. 4661

SB0017604661SD0

Offered by:

SEN. LEBEAU, 3rd Dist.
REP. BERGER, 73rd Dist.
SEN. FRANTZ, 36th Dist.
REP. ALBERTS, 50th Dist.

To: Subst. Senate Bill No. 176

File No. 162

Cal. No. 118

"AN ACT CONCERNING THE FILM TAX CREDIT."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 12-217jj of the 2010 supplement to the general
4 statutes is repealed and the following is substituted in lieu thereof
5 (*Effective July 1, 2010, and applicable to income years commencing on or after*
6 *January 1, 2010*):

7 (a) As used in this section:

8 (1) "Commissioner" means the Commissioner of Revenue Services.

9 (2) "Department" means the Department of Economic and
10 Community Development.

11 (3) (A) "Qualified production" means entertainment content created

12 in whole or in part within the state, including motion pictures;
13 documentaries; long-form, specials, mini-series, series, sound
14 recordings, videos and music videos and interstitials television
15 programming; interactive television; interactive games; videogames;
16 commercials; any format of digital media, including an interactive web
17 site, created for distribution or exhibition to the general public; and
18 any trailer, pilot, video teaser or demo created primarily to stimulate
19 the sale, marketing, promotion or exploitation of future investment in
20 either a product or a qualified production via any means and media in
21 any digital media format, film or videotape, provided such program
22 meets all the underlying criteria of a qualified production.

23 (B) "Qualified production" shall not include any ongoing television
24 program created primarily as news, weather or financial market
25 reports, a production featuring current events, sporting events, an
26 awards show or other gala event, a production whose sole purpose is
27 fundraising, a long-form production that primarily markets a product
28 or service, a production used for corporate training or in-house
29 corporate advertising or other similar productions, or any production
30 for which records are required to be maintained under 18 USC 2257
31 with respect to sexually explicit content.

32 (4) "Eligible production company" means a corporation, partnership,
33 limited liability company, or other business entity engaged in the
34 business of producing qualified productions on a one-time or ongoing
35 basis, and qualified by the Secretary of the State to engage in business
36 in the state.

37 (5) "Production expenses or costs" means all expenditures clearly
38 and demonstrably incurred in the state in the [development,]
39 preproduction, production or postproduction costs of a qualified
40 production, including:

41 (A) Expenditures incurred in the state in the form of either
42 compensation or purchases including production work, production
43 equipment not eligible for the infrastructure tax credit provided in

44 section 12-217kk, as amended by this act, production software,
45 postproduction work, postproduction equipment, postproduction
46 software, set design, set construction, props, lighting, wardrobe,
47 makeup, makeup accessories, special effects, visual effects, audio
48 effects, film processing, music, sound mixing, editing, location fees,
49 soundstages and any and all other costs or services directly incurred in
50 connection with a state-certified qualified production;

51 (B) Expenditures for distribution, including preproduction,
52 production or postproduction costs relating to the creation of trailers,
53 marketing videos, commercials, point-of-purchase videos and any and
54 all content created on film or digital media, including the duplication
55 of films, videos, CDs, DVDs and any and all digital files now in
56 existence and those yet to be created for mass consumer consumption;
57 the purchase, by a company in the state, of any and all equipment
58 relating to the duplication or mass market distribution of any content
59 created or produced in the state by any digital media format which is
60 now in use and those formats yet to be created for mass consumer
61 consumption; and

62 (C) "Production expenses or costs" does not include the following:
63 (i) On and after January 1, 2008, compensation in excess of fifteen
64 million dollars paid to any individual or entity representing an
65 individual, for services provided in the production of a qualified
66 production and on or after January 1, 2010, compensation subject to
67 Connecticut personal income tax in excess of twenty million dollars
68 paid in the aggregate to any individuals or entities representing
69 individuals, for star talent provided in the production of a qualified
70 production; (ii) media buys, promotional events or gifts or public
71 relations associated with the promotion or marketing of any qualified
72 production; (iii) deferred, leveraged or profit participation costs
73 relating to any and all personnel associated with any and all aspects of
74 the production, including, but not limited to, producer fees, director
75 fees, talent fees and writer fees; (iv) costs relating to the transfer of the
76 production tax credits; (v) any amounts paid to persons or businesses
77 as a result of their participation in profits from the exploitation of the

78 qualified production; and (vi) any expenses or costs relating to an
79 independent certification, as required by subsection (c) of this section,
80 or as the department may otherwise require, pertaining to the amount
81 of production expenses or costs set forth by an eligible production
82 company in its application for a production tax credit.

83 (6) "Sound recording" means a recording of music, poetry or
84 spoken-word performance, but does not include the audio portions of
85 dialogue or words spoken and recorded as part of a motion picture,
86 video, theatrical production, television news coverage or athletic event.

87 (7) "State-certified qualified production" means a qualified
88 production produced by an eligible production company that (A) is in
89 compliance with regulations adopted pursuant to subsection (g) of this
90 section, (B) is authorized to conduct business in this state, and (C) has
91 been approved by the department as qualifying for a production tax
92 credit under this section.

93 (8) "Interactive web site" means a web site, the production costs of
94 which (A) exceed five hundred thousand dollars per income year, and
95 (B) is primarily (i) interactive games or end user applications, or (ii)
96 animation, simulation, sound, graphics, story lines or video created or
97 repurposed for distribution over the Internet. An interactive web site
98 does not include a web site primarily used for institutional, private,
99 industrial, retail or wholesale marketing or promotional purposes, or
100 which contains obscene content.

101 (9) "Post-certification remedy" means the recapture, disallowance,
102 recovery, reduction, repayment, forfeiture, decertification or any other
103 remedy that would have the effect of reducing or otherwise limiting
104 the use of a tax credit provided by this section.

105 (10) "Compensation" means base salary or wages and does not
106 include bonus pay, stock options, restricted stock units or similar
107 arrangements.

108 (b) [(1)] The Department of Economic and Community

109 Development shall administer a system of tax credit vouchers within
110 the resources, requirements and purposes of this section for eligible
111 production companies producing a state-certified qualified production
112 in the state.

113 [(A)] (1) For income years commencing on or after January 1, 2006,
114 but prior to January 1, 2010, any eligible production company
115 incurring production expenses or costs in excess of fifty thousand
116 dollars shall be eligible for a credit against the tax imposed under
117 chapter 207 or this chapter equal to thirty per cent of such production
118 expenses or costs.

119 [(B)] (2) For income years commencing on or after January 1, 2010,
120 [(i)] (A) any eligible production company incurring production
121 expenses or costs of not less than one hundred thousand dollars, but
122 not more than five hundred thousand dollars, shall be eligible for a
123 credit against the tax imposed under chapter 207 or this chapter equal
124 to ten per cent of such production expenses or costs, [(ii)] (B) any such
125 company incurring such expenses or costs of more than five hundred
126 thousand dollars, but not more than one million dollars, shall be
127 eligible for a credit against the tax imposed under chapter 207 or this
128 chapter equal to fifteen per cent of such production expenses or costs,
129 and [(iii)] (C) any such company incurring such expenses or costs of
130 more than one million dollars shall be eligible for a credit against the
131 tax imposed under chapter 207 or this chapter equal to thirty per cent
132 of such production expenses or costs.

133 [(C)] (c) No eligible production company incurring an amount of
134 production expenses or costs that qualifies for such credit shall be
135 eligible for such credit unless on or after January 1, 2010, such
136 company conducts (A) not less than [fifty] twenty-five per cent of
137 principal photography days within the state, or (B) expends not less
138 than fifty per cent of postproduction costs within the state, or (C)
139 expends not less than one million dollars of post production costs
140 within the state.

141 [(D) (i)] (d) (1) For income years commencing on or after January 1,
142 2009, but prior to January 1, 2010, fifty per cent of production expenses
143 or costs shall be counted toward such credit when incurred outside the
144 state and used within the state, and one hundred per cent of such
145 expenses or costs shall be counted toward such credit when incurred
146 within the state and used within the state.

147 [(ii)] (2) For income years commencing on or after January 1, 2010,
148 no expenses or costs incurred outside the state and used within the
149 state shall be eligible for a credit, and one hundred per cent of such
150 expenses or costs shall be counted toward such credit when incurred
151 within the state and used within the state.

152 [(2)] (e) On and after July 1, 2006, and for income years commencing
153 on or after January 1, 2006, any credit allowed pursuant to this
154 subsection may be sold, assigned or otherwise transferred, in whole or
155 in part, to one or more taxpayers, provided no credit, after issuance,
156 may be sold, assigned or otherwise transferred, in whole or in part,
157 more than three times.

158 [(3)] (f) On and after July 1, 2006, and for income years commencing
159 on or after January 1, 2006, all or part of any such credit allowed under
160 this subsection shall be claimed against the tax imposed under chapter
161 207 or this chapter for the income year in which the production
162 expenses or costs were incurred, or in the three immediately
163 succeeding income years. Any production tax credit allowed under
164 this subsection shall be nonrefundable.

165 [(c)] (g) (1) An eligible production company shall apply to the
166 department for a tax credit voucher on an annual basis, but not later
167 than ninety days after the first production expenses or costs are
168 incurred in the production of a qualified production, and shall provide
169 with such application such information as the department may require
170 to determine such company's eligibility to claim a credit under this
171 section. No production expenses or costs may be listed more than once
172 for purposes of the tax credit voucher pursuant to this section, or

173 pursuant to section 12-217kk, as amended by this act, or 12-217ll, and if
174 a production expense or cost has been included in a claim for a credit,
175 such production expense or cost may not be included in any
176 subsequent claim for a credit.

177 (2) Not later than ninety days after the end of the annual period, or
178 after the last production expenses or costs are incurred in the
179 production of a qualified production, an eligible production company
180 shall apply to the department for a production tax credit voucher, and
181 shall provide with such application such information and independent
182 certification as the department may require pertaining to the amount
183 of such company's production expenses or costs. Such independent
184 certification shall be provided by an audit professional chosen from a
185 list compiled by the department. If the department determines that
186 such company is eligible to be issued a production tax credit voucher,
187 the department shall enter on the voucher the amount of production
188 expenses or costs that has been established to the satisfaction of the
189 department and the amount of such company's credit under this
190 section. The department shall provide a copy of such voucher to the
191 commissioner, upon request.

192 (3) The department shall charge a reasonable administrative fee
193 sufficient to cover the department's costs to analyze applications
194 submitted under this section.

195 [(d)] (h) If an eligible production company sells, assigns or
196 otherwise transfers a credit under this section to another taxpayer, the
197 transferor and transferee shall jointly submit written notification of
198 such transfer to the department not later than thirty days after such
199 transfer. If such transferee sells, assigns or otherwise transfers a credit
200 under this section to a subsequent transferee, such transferee and such
201 subsequent transferee shall jointly submit written notification of such
202 transfer to the department not later than thirty days after such transfer.
203 The notification after each transfer shall include the credit voucher
204 number, the date of transfer, the amount of such credit transferred, the
205 tax credit balance before and after the transfer, the tax identification

206 numbers for both the transferor and the transferee, and any other
207 information required by the department. Failure to comply with this
208 subsection will result in a disallowance of the tax credit until there is
209 full compliance on the part of the transferor and the transferee, and for
210 a second or third transfer, on the part of all subsequent transferors and
211 transferees. The department shall provide a copy of the notification of
212 assignment to the commissioner upon request.

213 [(e)] (i) Any eligible production company that submits information
214 to the department that it knows to be fraudulent or false shall, in
215 addition to any other penalties provided by law, be liable for a penalty
216 equal to the amount of such company's credit entered on the
217 production tax credit certificate issued under this section.

218 [(f)] (j) No tax credits transferred pursuant to this section shall be
219 subject to a post-certification remedy, and the department and the
220 commissioner shall have no right, except in the case of possible
221 material misrepresentation or fraud, to conduct any further or
222 additional review, examination or audit of the expenditures or costs
223 for which such tax credits were issued. The sole and exclusive remedy
224 of the department and the commissioner shall be to seek collection of
225 the amount of such tax credits from the entity that committed the
226 fraud or misrepresentation.

227 [(g)] (k) The department, in consultation with the commissioner,
228 shall adopt regulations, in accordance with the provisions of chapter
229 54, as may be necessary for the administration of this section.

230 Sec. 2. Subsection (b) of section 12-217kk of the 2010 supplement to
231 the general statutes is repealed and the following is substituted in lieu
232 thereof (*Effective July 1, 2010, and applicable to income years commencing*
233 *on or after January 1, 2010*):

234 (b) (1) (A) For income years commencing prior to January 1, 2010,
235 there shall be allowed a state-certified project credit against the tax
236 imposed under chapter 207 or this chapter to any taxpayer that invests
237 in a state-certified project. Such credit may be in the following

238 amounts: (i) For state-certified projects costing greater than fifteen
239 thousand dollars and less than one hundred fifty thousand dollars,
240 each taxpayer may be allowed a tax credit of ten per cent of the
241 investment made by such taxpayer; (ii) for state-certified projects
242 costing one hundred fifty thousand dollars or more, but less than one
243 million dollars, each taxpayer may be allowed a tax credit of fifteen per
244 cent of the investment made by such taxpayer; and (iii) for state-
245 certified projects costing one million dollars or more, each taxpayer
246 may be allowed a tax credit of twenty per cent of the investment made
247 by such taxpayer.

248 (B) For income years commencing on or after January 1, 2010, there
249 shall be allowed a state-certified project credit against the tax imposed
250 under chapter 207 or this chapter to any taxpayer that invests three
251 million dollars or more in a state-certified project in an amount equal
252 to twenty per cent of the investment made by such taxpayer.

253 (2) Eligible expenditures pursuant to this section shall include the
254 following: All expenditures for a capital project to provide buildings,
255 facilities or installations, whether [leased or purchased] a capital lease
256 or purchase, together with necessary equipment for a film, video,
257 television, digital production facility or digital animation production
258 facility; project development, including design, professional consulting
259 fees and transaction costs; development, preproduction, production,
260 post-production and distribution equipment and system access; and
261 fixtures and other equipment.

262 (3) Any credit allowed pursuant to this section may be sold,
263 assigned or otherwise transferred, in whole or in part, to one or more
264 taxpayers, and such taxpayers may sell, assign or otherwise transfer, in
265 whole or in part, such credit. Any taxpayer holding such credit may
266 claim such credit only for the income year in which expenditures were
267 made by the taxpayer for the infrastructure project.

268 (4) Any credit allowed pursuant to this section shall be claimed
269 against the tax imposed under chapter 207 or this chapter. If the

270 amount of the credit allowable under this section exceeds the sum of
271 any taxes due from a taxpayer, any such excess amount of the credit
272 allowable under this section may be taken in any of the three
273 immediately succeeding income years.

274 (5) Any tax credit earned under this section shall be nonrefundable."

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-217jj
Sec. 2	<i>July 1, 2010, and applicable to income years commencing on or after January 1, 2010</i>	12-217kk(b)